

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD

WALTERS GARDENS, INC.,

Opposer,

Opposition No. 91153755

vs.

Mark: PILU

PRIDE OF PLACE PLANTS, INC.,

Serial No.: 76,201,447

Applicant.

Filed: January 29, 2001

**ORIGINAL**

DEPOSITION OF MAURICE HORN

Taken in behalf of the Opposer

August 20, 2004

\* \* \*

**BEOVICH  
WALTER  
&  
FRIEND**

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1 BE IT REMEMBERED THAT the deposition of MAURICE  
2 HORN was taken before Deelana Johnson, CSR No.  
3 90-0104, on Friday, August 20, 2004, commencing at  
4 the hour of 9:10 a.m., the proceedings being reported  
5 at the Joy Creek Nursery, 20300 N.W. Watson Road,  
6 Scappoose, Oregon.

7  
8  
9  
10  
11 APPEARANCES  
12

13 MILLER, JOHNSON, SNELL & CUMMISKEY  
14 By Mr. Barry C. Kane  
15 Appearing in behalf of the Opposer  
16 (Appearing telephonically)  
17  
18  
19  
20  
21  
22  
23  
24  
25

MAURICE HORN  
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33	Plant Label	--

Previously Marked:

19	"The Illustrated Encyclopedia of Clematis"	35
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1 MAURICE HORN,  
2 having first been duly sworn, testified under  
3 oath as follows:

4 THE WITNESS: I do.

5  
6 EXAMINATION BY MR. KANE:

7 Q. Good morning, Mr. Horn.

8 A. Good morning.

9 Q. I'm Barry Kane. And I know we've met before, or  
10 discussed before. We've never met in person,  
11 have we?

12 A. No, we haven't.

13 Q. I appear today on behalf of Walters Gardens in  
14 the trademark opposition against Pride of Place  
15 Plants.

16 Mr. Horn, have you ever had your deposition  
17 taken before?

18 A. I have once before.

19 Q. Would you mind relating the instance?

20 A. Oh, it was about 16 or 17 years ago, when I was  
21 working in a law office, and I gave testimony as  
22 to a dating error in a document. That's the best  
23 I can remember. It was a very brief appearance.  
24 I also have given testimony in court in a trial.

25 Q. Okay. So then it would probably not be a

1 surprise to you that I will ask questions of you,  
2 and which we expect you to give an oral response  
3 because this is a transcribed proceeding. It  
4 will be difficult for Miss Johnson there to  
5 indicate if you nod your head up or down or left  
6 or right, or whether uh-huh is actually a huh-uh.  
7 Do you know what I mean by those difficult  
8 utterances?

9 A. Okay. I will give an oral response.

10 Q. Great. Mr. Horn, if you wouldn't mind, would  
11 you please provide your full name for the record.

12 A. Yes. It's Maurice R. Horn. Do you need my  
13 middle name?

14 Q. No, the middle initial is fine, thank you. And  
15 your city of residence, please?

16 A. Portland, Oregon.

17 Q. And your age?

18 A. I am 54.

19 Q. May I just call you Maurice?

20 A. Please.

21 Q. Maurice, are you currently employed?

22 A. Yes, I am.

23 Q. And the name of your employer?

24 A. Joy Creek Nursery.

25 Q. And your position?

- 1 A. I am an owner of the nursery.
- 2 Q. You said an owner of the nursery?
- 3 A. An owner of the nursery.
- 4 Q. Is there more than one owner?
- 5 A. There are two owners.
- 6 Q. Okay. And is there a position officially  
7 assigned to you at Joy Creek?
- 8 A. I have an official title as secretary/treasurer  
9 of the company. And I oversee retail and  
10 shipping operations here.
- 11 Q. Okay. That was -- You just anticipated my next  
12 question.
- 13 A. Okay.
- 14 Q. So you do oversee the retail and shipping  
15 operations.
- 16 A. That's correct.
- 17 Q. How long have you had this position?
- 18 A. Since we began the company, which was 13 years  
19 ago.
- 20 Q. Prior to Joy Creek, were you employed  
21 immediately prior to starting Joy Creek?
- 22 A. Yes, I was, except for a short month interval.  
23 I was working for an attorney before Joy Creek.
- 24 Q. In what capacity were you working for the  
25 attorney?

1 A. I was a paralegal.

2 Q. And how long were you at that position?

3 A. Approximately 14 years.

4 Q. And prior to the law offices, you were employed?

5 A. I was. I had various jobs.

6 Q. Okay. I think that's fine for our purposes.

7 A. Okay.

8 Q. Joy Creek Nursery, if we can, let's shift our  
9 discussion to the business.

10 A. Yes.

11 Q. I assume by the name Joy Creek Nursery that that  
12 is the nature of your business, that you are a  
13 retailer of nursery product.

14 A. We are a retailer of nursery product, and we  
15 also have catalog sales.

16 Q. Are your catalog sales sold at retail or  
17 wholesale?

18 A. They're sold at retail prices.

19 Q. Would catalog sales be referred to as mail  
20 order?

21 A. That's correct.

22 Q. And then do you also offer the ubiquitous forms  
23 of electronic forms of ordering?

24 A. Yes, we have e-mail ordering as well on our web  
25 site.

1 Q. So if I understand it, you have a traditional  
2 electronic or e-mail or Internet business; is  
3 that correct?

4 A. That's correct.

5 Q. And then do you also print and distribute hard  
6 copy papers of catalogs?

7 A. That's correct.

8 Q. How many mail order catalogs then in terms of  
9 paper do you distribute generally on an annual  
10 basis?

11 A. The count has grown. I think last year, it was  
12 approximately 9,000.

13 Q. And the general scope of those mailings, are  
14 they local or are they regional or are they  
15 national?

16 A. I would say the majority are national with a few  
17 going internationally.

18 Q. Okay. And with respect to your retail sales,  
19 would you characterize the nursery as a general  
20 or specialty nursery?

21 A. We are a specialty nursery.

22 Q. And what are the areas of specialty?

23 A. Clematis, penstemon, hydrangea, ornamental  
24 grasses, hostas, and we have many other large  
25 collections of smaller genera.

1 Q. Okay. I imagine that Miss Johnson has just set  
2 down a note there that she's probably going to  
3 need some spellings for some of these terms.

4 A. I'd be glad to help her.

5 Q. Clematis was one that you mentioned.

6 A. Yes.

7 Q. Hostas.

8 A. Yes. Penstemon, that's p-e-n-s-t-e-m-o-n.

9 Hydrangeas, ornamental grasses. And I think I  
10 used the word genera also, g-e-n-e-r-a.

11 Q. That's kind of a catch-all phrase.

12 A. We have an extensive listing of many types of  
13 plants.

14 Q. Sure. So is the specialty described then as to  
15 the -- Are the plants exotic or are some of them  
16 more common? Or if you could please define how  
17 you would characterize.

18 A. Our specialty is hardy perennials and small  
19 shrubs and trees. That's how we delimited it.  
20 Originally, it was plants that would be hardy for  
21 the Pacific Northwest; but with the expansion of  
22 our nursery, we also included plants that would  
23 be hardy elsewhere in the United States.

24 Q. I see. You mentioned that you do business both  
25 nationally and internationally. There's a small

1 percentage is international?

2 A. That's correct.

3 Q. Correct?

4 A. That's correct.

5 Q. Would you characterize the percentage for  
6 national, the national side of your business as  
7 constituting more than 75 percent of your  
8 business?

9 A. Yes. I would characterize the national business  
10 as constituting approximately 95 percent of the  
11 business; the international is just a very small  
12 portion of our business.

13 Q. Okay. And when we're talking about nationally,  
14 you would sell to folks on the East Coast as well  
15 as you would sell to folks on the West Coast and  
16 the Gulf Coast; is that correct?

17 A. That's correct. Literally, we ship to every  
18 state in the union.

19 Q. All right. Let's talk about generally the types  
20 of customers that Joy Creek sells to.

21 A. Okay.

22 Q. I understand that they're national in scope.  
23 But if you can, I'd like to put them in one of  
24 two categories.

25 A. Okay.

1 Q. There's the professional nurseryman or the  
2 hobbyist, enthusiast, layman side. You know, the  
3 kinds who do it on the side rather than as a  
4 profession.

5 A. I think we sell to a mix of both of them. I  
6 would say that we sell to a lot of botanical  
7 gardens and other nurserymen who are interested  
8 in acquiring plants that they can indeed produce  
9 themselves and sell to their local customers, but  
10 we also have a very large group of enthusiasts,  
11 hobbyists if you want to call them that.

12 Q. And I don't mean any insult by that  
13 characterization. I just know that there are  
14 folks whose primary principal amount of time that  
15 they spend each day may not be involved in that,  
16 so I call it sort of a sideline or a hobby or  
17 maybe an enthusiast.

18 A. Sure. And I would say the enthusiast is the  
19 majority of our business, but we do sell to many  
20 botanical institutions as well as other  
21 nurserymen.

22 Q. Okay. And if I may, how do you sort of  
23 formulate that opinion as to the characterization  
24 of your customers? Do you have daily  
25 interactions with these folks?

1 A. For many years -- No, in the last three or four  
2 years; but for many years, I had directly had  
3 contact with almost all of the customers that  
4 were ordering from us, because I originated --  
5 you know, I was the first line of defense here  
6 before we grew larger. And so --

7 Q. Okay. So you've had telephone conversations and  
8 the like?

9 A. Yes.

10 Q. So you could get a feel for the background of  
11 these folks?

12 A. That's correct. And I field many of the  
13 problems and questions that people have before  
14 they order.

15 Q. Okay. So in light of this as being a national  
16 and somewhat international business, you have  
17 plant stock and inventory, correct?

18 A. That is correct.

19 Q. And then how do you get it to the customer?

20 A. We use UPS, or if it's requested, we also send  
21 by U.S. mail or any other service.

22 Q. So I understand then that the plant material is  
23 placed in some form of packaging so it will  
24 survive the trip.

25 A. That's correct. We -- we box appropriately so

1 the plants reach the customer in an appropriate  
2 fashion.

3 Q. Okay. Are the plants, are they accompanied with  
4 any labeling material to identify the plant?

5 A. Yes. We always put our own Joy Creek Nursery  
6 label on plants. We do acquire or work with some  
7 wholesale growers who put their labels as well on  
8 plants.

9 Q. Okay. And what type of information is contained  
10 on these labels?

11 A. Basically, the name of the plant and the price  
12 of the product is on our labels. The wholesalers  
13 often will put additional information, and we  
14 have fliers or handouts that we insert in  
15 packaging, telling people how to grow plants.

16 Q. I see. Is this information specific to the  
17 plant that's being shipped?

18 A. Yes. For example, if I send a clematis, I have  
19 several fliers that are included in the package  
20 about how to grow and care for clematis.

21 Q. Okay. And these labels for the plants, I just  
22 want to make sure I'm clear on this, I understand  
23 this: You mentioned that it has the name of the  
24 plant.

25 A. That's correct.

1 Q. How -- strike that. I'm a little bit confused  
2 on how to ask this question.

3 In what form does the name appear? Is it a  
4 scientific name?

5 A. We do our best to conform to the rules of  
6 international nomenclature. And the rules are  
7 becoming stricter, and it is hard to keep up with  
8 that nomenclature. From time to time we have to  
9 go back to botanic institutions to get that  
10 information.

11 Right now, for example with the clematis, I'm  
12 using "The International Clematis Register and  
13 Checklist," which was developed by the Royal  
14 Horticultural Society in England. For other  
15 nomenclature, I go to my best scientific source.

16 Q. Okay. Do you recognize the Royal Horticultural  
17 Society's list of -- let me make sure I've got  
18 the proper title here -- "The International  
19 Clematis Register and Checklist" as the official  
20 registry for clematis?

21 A. Yes, I do.

22 Q. Okay. And how do you obtain a copy of that  
23 checklist?

24 A. You can acquire it from the Royal Horticultural  
25 Society.

1 Q. So it is for sale or available in this country;  
2 is that correct?

3 A. It is. You can acquire it online even through  
4 the Royal Horticultural Society and order it that  
5 way.

6 Q. Okay. Maurice, we've talked about clematis as  
7 one of the specialty plants that you grow.

8 A. Yes.

9 Q. Or that you sell, I should say.

10 A. We sell.

11 Q. Are you a member personally of any organizations  
12 that focus on clematis?

13 A. Yes, I am. I'm a member of the International  
14 Clematis Society, I'm a member of the British  
15 Clematis Society, and I'm co-founder of the  
16 Pacific Northwest Clematis Society.

17 Q. Is there an American Clematis Society?

18 A. There is apparently an organization by that name  
19 in Southern California. I'm not a member of it.  
20 It's quite a small organization.

21 Q. I'm just taking some notes, and there will be  
22 some pauses from time to time.

23 A. That's fine.

24 Q. Can you estimate how many members in the  
25 United States that belong to the International

1 Clematis Society?

2 A. I think our membership now totals 40.

3 Q. And by the name, International Clematis Society  
4 has a much larger membership. The 40 is just in  
5 the United States; is that correct?

6 A. That's correct.

7 Q. And are you on the board of the International  
8 Clematis Society?

9 A. I have just stepped down from the council, the  
10 council of the International Clematis Society.  
11 My term had run, and they want to nominate me  
12 again in a few years.

13 Q. Okay. What is your role with the British  
14 Clematis Society?

15 A. I'm simply a member.

16 Q. And the Pacific Northwest Society?

17 A. I'm the vice president.

18 Q. And do you have any idea how many members are in  
19 the British Clematis Society?

20 A. Oh, I really don't. I could look that fact up,  
21 I suppose, at home in some of my catalogs, but I  
22 don't have the number with me.

23 Q. All right. Do you have any idea, in the  
24 United States how many are members?

25 A. Of the British Clematis Society?

1 Q. Yes.

2 A. It's probably a small number. I would say 20 or  
3 30.

4 Q. And I'd like to ask the same general questions  
5 with respect to the Pacific Northwest Society.

6 A. The Pacific Northwest Society I think counts  
7 about 120 members. And I think approximately 30  
8 belong to -- of the members belong to the  
9 International Clematis Society. And it's a  
10 regional society, not simply a Portland society,  
11 the Pacific Northwest society.

12 Q. So just generally, if you were to draw a line  
13 around on a map, where would these members come  
14 from?

15 A. Eugene, Oregon, Portland, and Seattle. That  
16 area, basically. We have a few members in  
17 Canada, and we also have members of the Pacific  
18 Northwest Clematis Society throughout the  
19 United States.

20 Q. Okay. The backgrounds of these members, are  
21 they predominantly professionals or are they,  
22 again, the enthusiasts that we were talking  
23 about?

24 A. It's a combination of both. I would say that  
25 the enthusiasts are the majority, but growers and

1           also sellers of these plants are in the society.

2       Q.    Okay.  You mentioned "The International Clematis  
3           Register and Checklist."

4       A.    Yes.

5       Q.    That's published by the Royal Horticultural  
6           Society?

7       A.    That's correct.

8       Q.    Is there a formally recognized registrar for  
9           clematis?

10      A.    Are you speaking of the name of one particular  
11           person or are you talking about a particular  
12           publication?

13      Q.    I'm talking about an organization.  For example,  
14           is there an organization that's generally  
15           recognized as being the authority for recognizing  
16           names?

17      A.    Well, it's my understanding there is an  
18           international council of the rules of  
19           nomenclature.  I don't know the exact title of  
20           that council, but they do meet on a regular  
21           basis.

22      Q.    Are you familiar with an organization called the  
23           International Cultivar Registration Authorities,  
24           ICRA's?

25      A.    I've heard of it but I'm not familiar -- I mean,

1 I've heard the name but I'm not familiar with  
2 them as an organization.

3 Q. Let's talk about these societies that you're  
4 currently involved with.

5 A. Okay.

6 Q. I mean, you do have interaction with others in  
7 the United States on clematis, correct?

8 A. I have weekly interaction with people throughout  
9 the world on clematis.

10 Q. Okay. And these are societies that deal  
11 specifically with this genera, if I'm correctly  
12 characterizing it that way?

13 A. It would be a genus in this case.

14 Q. Genus?

15 A. Yes.

16 Q. That's the clematis genus, is it not?

17 A. Yes.

18 Q. Okay. Is there a unified method for making  
19 reference to specific plants in this genus?

20 A. Yes, there is. Right now, the rules that have  
21 been -- the international rules of nomenclature  
22 have been formalized, and they were followed and  
23 applied to in "The International Clematis  
24 Register and Checklist" that was published in  
25 2002.

1 Q. And do all of these organizations refer to that  
2 international checklist?

3 A. It would be -- Yes, that would be my  
4 supposition. I --

5 Q. That's all right, it's your opinion.

6 A. Yes, that's my opinion.

7 Q. Sure. And what is the form of these plant  
8 names? How do they appear or how are they used?

9 A. Normally, they --

10 Q. That's two questions. Let's talk about if you  
11 were to write it down on your computer there, how  
12 would it appear?

13 A. First, I would put the name of the genus with a  
14 capital, beginning with a capital letter. And  
15 then I would put the species name. If there were  
16 a cultivar name, I would put that in single  
17 quotes after the name of the -- the genus.

18 Q. Okay. You mentioned that you would include the  
19 species name.

20 A. Yes. But if there is a problem -- The rules of  
21 nomenclature require us to drop the species name  
22 if there's a cultivar name because the cultivar  
23 or hybrid name in and of itself tells you that  
24 there is a cross involved. And so what they're  
25 now requiring us to do is simply put the name

1 after the genus in single quotes.

2 Q. Okay. And you said the name, and that's the  
3 term that appears in single quotes.

4 A. In single quotes, that's correct.

5 Q. Would enthusiasts also refer to that term in  
6 single quotes as the common name for the plant?

7 A. I imagine they would call -- The common name for  
8 a plant, in my understanding, is for example  
9 Virgin's Bower would be the common name of a  
10 clematis.

11 Q. Okay. Is Virgin's Bower also the cultivar name?

12 A. No, it's not.

13 Q. Okay. I want to make sure I --

14 A. Hopefully, I'm not being a stickler but  
15 that's --

16 Q. The cultivar name then would be -- that would be  
17 the common name that those in the industry or  
18 enthusiasts would use to identify a particular  
19 species of clematis.

20 A. I think that the cultivar name would simply be  
21 used to identify that particular cultivar, not a  
22 species. And I guess maybe I could tell you --  
23 explain it best by an example. Would that be  
24 okay?

25 Q. I'm sorry, you cut out on me. I didn't hear

1           what you said.

2    A.    I perhaps could clarify that best by giving an  
3           example.

4    Q.    Yes, please do.

5    A.    For example, we used to say clematis texensis  
6           'Gravetye Beauty.' But the recent rules of  
7           nomenclature ask us to simply say Clematis  
8           'Gravetye Beauty,' and leave out texensis.  
9           Although the plant does have the species texensis  
10          included in it, it is no longer a texensis plant.

11   Q.    I see.

12   A.    So we've been asked to leave out the species  
13          name and simply to place the cultivar name next  
14          to the genus.

15   Q.    Okay. And do you use that format when you label  
16          the plants that are -- that you sell?

17   A.    That's correct, that's the format that I use.

18   Q.    Okay. I'm going to shift gears here a little  
19          bit.

20   A.    Okay.

21   Q.    Are you familiar with the term 'Piilu'?

22   A.    I'm familiar with that name 'Piilu'.

23   Q.    And how would you spell that term?

24   A.    P-i-i-l-u.

25   Q.    Okay. And do you know what the name means?

1 A. I do. It was translated for me when I was  
2 visiting Estonia as "duckling."

3 Q. And in what context is 'Piilu' used?

4 A. It's used to describe a recent cultivar from  
5 Estonia that is -- Do you want me to describe the  
6 plant?

7 Q. That was going to be my next question.

8 A. Okay. It's notable for the fact that it does  
9 double, semi-double, and single blooms on a  
10 somewhat shortened stem, blooming from both the  
11 base of the plant all the way up to the tip, I  
12 should say that. So it's a -- it's a cultivar  
13 now that -- I can tell you the significance of  
14 the plant to me is that it's easy to sell because  
15 it is in bloom from top to bottom.

16 Q. Okay. So if we're correct then, 'Piilu' would  
17 appear in single quotes.

18 A. That's correct, it would be in single quotes  
19 after clematis.

20 Q. And that would be the cultivar hybrid --  
21 cultivar name or the generally recognized name  
22 for the plant having those characteristics.

23 A. That's correct.

24 Q. Has the 'Piilu' name been described in  
25 literature for this particular cultivar?

1 A. Yes, it has. It has been described in the  
2 International Clematis Society Journal, and it's  
3 been described in many books, one of them is "An  
4 Illustrated Encyclopedia of Clematis" by Mary  
5 Toomey and Everett Leeds.

6 Q. I understand that there is a copy of that  
7 International Clematis Journal in front of you;  
8 is that correct?

9 A. Yes, I have that here.

10 MR. KANE: Miss Johnson, if we could, I'd  
11 like to mark that as an exhibit.

12 (Discussion off the record.)

13 (Exhibit WG 30 marked)

14 Q. Mr. Maurice, Miss Johnson has placed before you  
15 what has been marked as WG 30.

16 A. Yes.

17 Q. And you initially had identified it as a copy of  
18 the International Clematis Journal.

19 A. That's correct.

20 Q. Is that the correct name for the publication?

21 A. I -- It's simply called the "Clematis  
22 International 1999." That's how it's labeled on  
23 the cover of this particular journal.

24 Q. Okay. And it was published in 1999.

25 A. That's correct.

1 Q. Is my understanding correct there?

2 A. That's correct.

3 Q. How often is it published, do you know?

4 A. This is a yearly journal.

5 Q. And who publishes it?

6 A. It's published by the International Clematis  
7 Society.

8 Q. Okay. And is this circulated to members in this  
9 country?

10 A. It is circulated to the entire membership,  
11 including those in this country.

12 Q. Okay. And this particular volume of 1999, does  
13 it contain a reference to clematis 'Piilu'?

14 A. Yes, it does. There's an article in here which  
15 is a tribute to the hybridizer, whose name is Uno  
16 Kivistik.

17 Q. Would you spell that for Miss Johnson.

18 A. Certainly. K-i-v-i-s-t-i-k, first name U-n-o.  
19 And within that article, there's a listing of  
20 many of the plants that Mr. Kivistik produced.  
21 This article, by the way, was co-authored by  
22 myself.

23 Q. Very interesting. Thank you for sharing that.  
24 I wasn't aware.

25 Does it specifically mention the cultivar

1 clematis 'Piilu'?

2 A. Yes, it does, on page 27.

3 Q. Okay. Who would have named the plant 'Piilu'?

4 A. This was named by Mr. Kivistik or his family,  
5 someone in his family.

6 Q. Okay. And concerning the naming of this plant,  
7 would Mr. Kivistik or someone in his family have  
8 also registered that name with the Royal  
9 Horticultural Society?

10 A. No, that would not have happened at the time  
11 that he named this. When this plant was created,  
12 Mr. Kivistik was behind the Iron Curtain.

13 Q. I see. So the article is dated 1999.

14 A. That's correct.

15 Q. Would this have been published at the beginning  
16 of the year or toward the end of the year? Or  
17 what time during the calendar would it be  
18 published?

19 A. It would be published early in the year. We  
20 usually receive them -- Because they're  
21 distributed internationally, there's a little  
22 time lag, but we usually receive them early in  
23 the year.

24 Q. So is it possible that this article was written  
25 in 1998?

1 A. The article was written in 1998.

2 Q. As a co-author then, was your contribution  
3 remote or did you visit Mr. Kivistik in Estonia?

4 A. I was privileged to visit Mr. Kivistik and  
5 his -- at his nursery in Estonia. He had passed  
6 away by this time, but his son Taavi, which is  
7 spelled T-a-a-v-i, led us around the nursery and  
8 gave us access to his plants for an entire day.  
9 I wrote this article with Ruth Gooch, who is a  
10 grower in England.

11 Q. Okay. When you said Taavi gave you access to  
12 these plants for a day, were you also permitted  
13 to take samples of plants with you?

14 A. We didn't take samples of these plants. These  
15 plants were planted in his test garden, and we  
16 were allowed to photograph. And he stayed with  
17 us and answered questions on the plants  
18 throughout the day, and then took us back into an  
19 additional growing area, showing us thousands of  
20 other test plants that Mr. Kivistik had been  
21 working on.

22 Q. All right. Do you know if any of the material  
23 that was on Mr. Kivistik's I want to call it --  
24 it's not a greenhouse, it's probably an open  
25 garden, right?

1 A. These plants were all in an open garden except  
2 for 'Piilu', the plant in question, which was  
3 being kept in a greenhouse.

4 Q. Okay. Do you know if at the time of your visit  
5 to the Kivistik farm, if 'Piilu' was available or  
6 being sold commercially by anyone?

7 A. I -- I can't answer that question because I  
8 don't remember. Most of the plants were  
9 available for sale in Mr. Kivistik's garden.  
10 They had produced them. 'Piilu' was not very  
11 vigorous. And they had -- It looked to me at  
12 that time that they were not producing it because  
13 it lacked vigor. Does that term make sense to  
14 you? It hadn't produced much growth, and so they  
15 didn't have a lot of cutting material.

16 So I do not know specifically if 'Piilu' was  
17 for sale. But most of these other plants were  
18 for sale, and I did take many of the other plants  
19 listed in this article home.

20 Q. Okay. Did you take any 'Piilu' with you?

21 A. No, I did not; it was not available.

22 Q. Okay. Is 'Piilu' currently being offered for  
23 sale by Joy Creek?

24 A. Yes, it is.

25 Q. And do you recall when you first started

1 offering 'Piilu' for sale?

2 A. We first started offering it last year, in 2003.

3 Q. You indicated that you had -- When was your trip  
4 to Estonia, approximately?

5 A. I believe it was 1997 or '98. One of those  
6 years. I have -- I'm a poor historian, but I  
7 could look it up for you if you needed me to get  
8 that fact.

9 Q. It would make sense that it was before the  
10 publication of the article.

11 A. Yes, that's correct.

12 Q. And you indicated that you were able to take  
13 home with you plant material, some plants from  
14 the Kivistik farm; is that correct?

15 A. That's correct. They -- they sold them to us,  
16 and they cleaned them and washed them and brought  
17 them to our hotel the following morning.

18 Q. When did you first start to offer clematis from  
19 the Kivistik farm for sale at Joy Creek?

20 A. In 1998.

21 Q. Do you recall which varieties you were offering  
22 for sale?

23 A. Yes; a variety called 'Viola', that's spelled  
24 V-i-o-l-a, and 'Romantika', which is spelled  
25 R-o-m-a-n-t-i-k-a.

1 Q. Do you know if others in the United States are  
2 currently offering the 'Piilu' cultivar for sale  
3 in the United States?

4 A. Yes, I do believe there are other nurseries  
5 selling 'Piilu'. It is now in what I call the  
6 general trade.

7 Q. General trade meaning it's available from just  
8 about anybody.

9 A. Yes. I do believe that the Dutch are producing  
10 this and selling it in vast quantities to  
11 nurseries throughout the United States.

12 Q. Okay. Do you happen to have, by the way, a copy  
13 of "The International Clematis Registrar and  
14 Checklist" in front of you?

15 A. Yes, I do.

16 Q. Can you tell me, do you know what page 'Piilu'  
17 is mentioned or referenced in this text?

18 A. I have just opened it to page 253.

19 Q. I believe this was marked elsewhere, and I'm  
20 looking through my exhibits right now so that I  
21 can use the same exhibit number that I used  
22 previously.

23 A. Do you want me to look on the computer?

24 Q. No, actually, I have a hard copy of it here, it  
25 should be faster for me to rifle through it if I

1 can get to it. Tell you what. Why don't we just  
2 label it right now as WG 31.

3 (Exhibit WG 31 marked)

4 Q. And we'll also make reference to page 253 as  
5 part of that exhibit. If I may, I'd like to  
6 direct your attention actually to that page.

7 A. Okay.

8 Q. I see a reference there at the bottom of the  
9 description for 'Piilu', it says: Published  
10 r-e-f period Tooveere, T-o-o-v-e-e-r-e.

11 A. Yes.

12 Q. 1992.

13 A. Yes.

14 Q. Are you familiar with that reference?

15 A. Yes, I'm familiar with that reference.

16 Q. And can you describe it for me, please.

17 A. It's a small catalog or listing of plants from  
18 behind the Iron Curtain and some western hybrids,  
19 that was published in 1992 with English and  
20 Russian names. And I was given a copy of that, I  
21 do believe, almost ten years ago.

22 Q. Do you know if that publication was available to  
23 others in the industry, in this country?

24 A. I do believe it was -- I received mine by way of  
25 the International Clematis Society and through

1 friends there, because I was interested in these  
2 hybrids from behind the Iron Curtain.

3 Q. Okay. Do you happen to have a copy of it before  
4 you?

5 A. I do not.

6 Q. Okay. Is it a reference that you've -- I mean,  
7 have you read it or gone through the reference?

8 A. Oh, yes, I've read it many times. I've used it  
9 extensively and I keep it in my private  
10 collection at home.

11 Q. Okay. Do you know if it contains a reference to  
12 clematis 'Piilu'?

13 A. It does; but I -- I do not remember the extent  
14 of the description in the catalog.

15 Q. Okay. I believe I have sent you, it's going to  
16 be on your computer --

17 A. Yes, and I can go and -- If you'd like me to go  
18 into the computer, I can go and do that at this  
19 point.

20 Q. How far away is it?

21 A. Just behind me.

22 (Discussion off the record.)

23 (The reporter read as requested.)

24 MR. KANE: I'm going to ask the court  
25 reporter to mark the next Exhibit as WG 32, which

1 is an abbreviated copy of the Tooveere  
2 publication we were just referring to.

3 (Exhibit WG 32 marked)

4 Q. Maurice, do you recognize Exhibit WG 32?

5 A. Yes, I do.

6 Q. Can you describe it for me, please.

7 A. This is a page from the Tooveere listing of  
8 plants. And 'Piilu' is on this page.

9 Q. Okay. Does this represent, in your mind, an  
10 accurate copy of the text that's in your  
11 collection?

12 A. Yes, it does.

13 Q. Okay. Do you know when this publication was  
14 available?

15 A. I think it was 1992. Just off the top of my  
16 head, I assume it was 1992. But I didn't get it  
17 until a couple of years later.

18 Q. Okay. Have you ever met Mr. Tooveere?

19 A. I did not have the fortune to meet him, no. But  
20 I've met several people from the Estonian  
21 Clematis Club that put this together.

22 Q. Do you know if Mr. Tooveere is still alive?

23 A. I do believe he is dead.

24 Q. Okay. All right. Are you able to read the page  
25 number where 'Piilu' appears in this publication?

- 1 A. It's a little smudgy. It looks like either 54  
2 or 56 on this page. But I assume it's 56.
- 3 Q. Okay. Thank you very much. Is page 74  
4 accompanying this publication?
- 5 A. Yes, it is.
- 6 Q. Can you take a look at that for me, please?
- 7 A. Yes, I can.
- 8 Q. This apparently lists the members of the  
9 Estonian Clematis Club.
- 10 A. Yes, I see several familiar names there.
- 11 Q. Okay. And the Kivistiks are on that list.
- 12 A. Yes, Mr. and Mrs. Kivistik's name is here.
- 13 Q. Thank you very much. Has this reference ever  
14 come up in other conversations that you've had  
15 with others in the society?
- 16 A. One of my colleagues, Brewster Rogerson, and I  
17 often -- earlier referred to it, before any other  
18 publications were available for us to look at.  
19 This was our bible for plants from behind the  
20 Iron Curtain.
- 21 Q. Okay. You had mentioned earlier when we were  
22 talking about publication, you mentioned the name  
23 I believe Mary Toomey?
- 24 A. Yes.
- 25 Q. That's T-o-o-m-e-y?

1 A. That's correct.

2 Q. Okay. And you have before you "The Illustrated  
3 Encyclopedia of Clematis"?

4 A. Yes, I do.

5 Q. You indicated that this text also contains a  
6 description or some publication for 'Piilu', does  
7 it?

8 A. Yes, it does.

9 MR. KANE: First, I have marked this  
10 previously as WG 19. And I'd like to have it  
11 marked by the court reporter.

12 (Exhibit WG 19 marked)

13 Q. Maurice, you have what has been marked as WG 19  
14 before you. Is this "The Illustrated  
15 Encyclopedia of Clematis"?

16 A. Yes, it is.

17 Q. And if you wouldn't mind, would you find in  
18 there the page that makes reference to 'Piilu'.

19 A. It's page 318.

20 Q. Do you know when this publication was published?

21 A. I can look it up. It was published in 2001.

22 Q. All right. Did you contribute as a co-author to  
23 this publication?

24 A. Yes; I was asked by Mary Toomey to submit a  
25 chapter on clematis -- growing clematis in North

1 America, and that's contained inside the book.

2 Q. Okay. Did you get a chance to review the galley  
3 pages before the book was published?

4 A. No, I was never privileged to see the galley  
5 pages except for my own text.

6 Q. All right. And the copy of the text that you  
7 have, how did you obtain that copy?

8 A. This one was given to me by the publisher in  
9 thanks for working on the book.

10 Q. Do you know if the book is available in the  
11 United States?

12 A. Yes, it's distributed throughout North America.

13 Q. Okay. I'm going to -- Wait a second here, if  
14 you'll bear with me.

15 I've deviated from my outline here, so.  
16 Maurice, you've indicated that you are member of  
17 these three different clematis societies.

18 A. That's correct.

19 Q. International Clematis Society, the British  
20 Clematis Society, and the Pacific Northwest  
21 Clematis Society.

22 A. That's correct.

23 Q. In the past, have you given lectures to other  
24 organizations?

25 A. Yes, I frequently lecture throughout the

1 United States.

2 Q. Do you lecture specifically on clematis or do  
3 you lecture more on general subjects of  
4 horticulture?

5 A. I would say 50 percent of my talks are on  
6 clematis.

7 Q. Okay. And who are in the audience for these  
8 lectures?

9 A. They would be plant enthusiasts. Most of these  
10 lectures that I've given have been sponsored by  
11 botanical institutions like the Scott Arboretum  
12 in Philadelphia. I've spoken in Michigan,  
13 Cleveland, Seattle, Eugene. I can't remember all  
14 the lectures I've given.

15 Q. So would I assume correctly then that at each of  
16 these venues where you've lectured are  
17 enthusiasts?

18 A. Plant enthusiasts and maybe some people that are  
19 affiliated with the botanical societies that are  
20 interested in getting new information.

21 Q. They could be laymen, people who are just coming  
22 to get some information on clematis.

23 A. That's correct.

24 Q. In any of your lectures, do you make specific  
25 reference to 'Piilu'?

1 A. I actually do. Early on, I gave many talks on  
2 clematis from Eastern Europe, because I'm very  
3 interested in them. And I always showed a  
4 picture of 'Piilu' because I think it's a  
5 significant plant.

6 Q. And do you entertain questions at these  
7 lectures?

8 A. I do.

9 Q. And can you characterize for us the amount of  
10 interest that you generated in this particular  
11 cultivar?

12 A. Oh, in 'Piilu' specifically?

13 Q. Yes.

14 A. I do not remember anyone asking me about 'Piilu'  
15 specifically.

16 Q. Okay. But you are selling product from your  
17 nursery.

18 A. That's correct. Or here at the nursery?

19 Q. And it's then distributed nationally and perhaps  
20 internationally.

21 A. That's correct.

22 Q. Okay. How long have you been giving these  
23 lectures, Maurice?

24 A. Oh, I've been speaking publicly probably for  
25 the -- we give -- You have to understand that I

1 have an educational program here at Joy Creek  
2 also, which I've spoken at for the last nine  
3 years. But nationally, probably eight years.

4 Q. Okay. When you returned from Estonia in 1997,  
5 was 'Piilu' of interest to you at that time?

6 A. It was, because it was -- I was told by Taavi  
7 that it was a short plant, it didn't get very  
8 tall, and would bloom on a three-foot stake,  
9 which meant it would be convenient, it would be a  
10 plant that one could sell for -- to an impulse  
11 shopper as opposed to -- I sell my plants here  
12 out of bloom, but I have to give a lot of  
13 description to my customers. But this would be a  
14 plant that I wouldn't have to describe as often  
15 because it would probably be in bloom.

16 Q. I see. Do you know a gentleman by the name of  
17 Rick Sorenson?

18 A. Yes, I do. I don't know him personally, but  
19 I've spoken with him on the telephone and  
20 exchanged e-mails with him many times.

21 Q. Okay. Do you recall -- I'm going to ask you to  
22 pull on your calendar again.

23 A. Okay.

24 Q. Do you recall when your first interaction with  
25 Mr. Sorenson occurred?

1 A. I'm thinking it was in 1997, or maybe slightly  
2 previous to that.

3 Q. And do you remember the subject of your  
4 encounter with Mr. Sorenson?

5 A. Yes. He was interested in clematis cultivars  
6 that had been developed by Barry Fretwell in  
7 England. And he had come looking -- He had come  
8 to our nursery, although I do not remember  
9 talking to him, looking for a grower for  
10 Mr. Fretwell's plants in the United States.

11 Q. Okay. And in that period from -- Let's see, if  
12 I understand correctly, you first started  
13 introducing Estonia clematis back in 1998, when  
14 you introduced the Clematis 'Viola' and  
15 'Romantika'; is that correct?

16 A. That's correct.

17 Q. At the time when Mr. Sorenson visited your  
18 nursery -- and I'm sorry, I didn't write down --  
19 oh, perhaps '96.

20 A. Yes, I think it was probably 1997. But you  
21 know, I didn't keep notes on this because I  
22 didn't know it would be significant.

23 Q. Sure, sure.

24 A. I didn't really know Mr. Sorenson's capacity at  
25 the time, what -- who he was working for or what

1 his ideas were. He seemed to be another clematis  
2 enthusiast that was trying to market plants.

3 Q. Were your interactions with Mr. Sorenson fairly  
4 continuous or was there a long period of time  
5 after that initial meeting?

6 A. There was a -- a pause after that initial  
7 meeting, and then I had a telephone contact with  
8 him.

9 Q. And do you know approximately when that took  
10 place, what year?

11 A. I don't remember the year. It would have been  
12 several months after he came to the nursery.

13 Q. Okay. And what was the subject of that  
14 telephone conference or telephone call?

15 A. It would have either been on Clematis  
16 'Romantika' or Clematis 'Viola'. I don't  
17 remember the order with which we discussed these  
18 two plants.

19 Q. Was it an inquiry by Mr. Sorenson?

20 A. Yes. He called and asked me if I had -- I think  
21 his question was, "Have you sold Clematis 'Viola'  
22 yet?" And I said, "Yes, it's listed in my  
23 catalog for this year, 1998."

24 Q. Okay. And did you understand the reason for his  
25 wanting to know that information?

1 A. At that time I didn't understand it. I -- I was  
2 very surprised at his response. He -- he said,  
3 "Damn" and hung up the phone. And I assumed he  
4 was mad because I was selling it before he had  
5 gotten the opportunity to sell it.

6 Q. Uh-huh.

7 A. But that was -- that was -- It was a mystery to  
8 me.

9 Q. Okay. Have you had conversations with  
10 Mr. Sorenson concerning Clematis 'Piilu'?

11 A. I have never had a conversation concerning  
12 'Piilu'. I have had e-mail contact from him  
13 concerning 'Piilu'.

14 Q. Do you have copies of those e-mails still on  
15 your system?

16 A. Yeah, I just recently received them. He sent me  
17 a copy of his trademark on 'Piilu'.

18 Q. I see.

19 A. And I have them on my web site.

20 Q. Would you be willing to share with us the  
21 contents of those communications?

22 A. I can. I'll have to go into my e-mail.

23 Q. Not right now.

24 A. Yes.

25 Q. But at a later time, if you wouldn't mind.

1 A. Yes, I can do that.

2 Q. Thank you very much. So I take it from that  
3 e-mail that you recently received from  
4 Mr. Sorenson that you have the document that he  
5 sent you. What did that indicate to you?

6 A. The document he sent me was -- was -- it was his  
7 filing for the trademark and showing me that he  
8 had registered the name 'Piilu', and that I  
9 needed to indicate in my catalog that it was  
10 trademarked.

11 Q. And your impression, did that strike you that --  
12 how did that strike you when you received that?

13 A. Well, he had sent me previous correspondence  
14 telling me that all of Mr. Kivistik's plants have  
15 been trademarked. And I have not been selling  
16 any of Mr. Kivistik's plants because of that,  
17 because I don't want to pay him trademark fees  
18 for his registration.

19 Q. But he's asking for royalties for your sale of  
20 those plants?

21 A. For the use of the name of those plants is my  
22 understanding.

23 Q. And the plants that he's referring to, were they  
24 available elsewhere?

25 A. Yes. The plants that he's referring to, he

1 first of all was referring -- the only two that  
2 I've been selling have been 'Viola' and  
3 'Romantika' because I didn't think he could  
4 trademark them because I had released them before  
5 he told me that he was going to trademark them.

6 Q. I see.

7 A. Does that make sense to you? Sequentially, I've  
8 had communication with him maybe once or twice a  
9 year for the past several years, from 1997  
10 forward, probably. And he finally did let me  
11 know his intention was to trademark the names of  
12 all of Mr. Kivistik's plants. And I didn't want  
13 to do business -- He wanted me to buy plants from  
14 him and give him extra royalties for the use of  
15 those plants.

16 Q. I see.

17 A. And I didn't want to do business with him  
18 because I -- I work with growers, I don't grow  
19 most of my plants myself. I work with growers  
20 that are near me.

21 Q. Sure. Has Mr. Sorenson asked that you pay  
22 royalties for your sale of 'Piilu'?

23 A. He's asked my growers to pay royalties.

24 Q. And where do you get your stock from?

25 A. From Dave McCoy, McCoy Family Nurseries, which

1 is just over the hill in Cornelius, Oregon.

2 Q. Can you spell McCoy for me, please.

3 A. M-c capital C-o-y.

4 Q. And they're in Cornelius.

5 A. That's correct.

6 Q. And how long has the McCoy Family Nursery been  
7 providing clematis, do you know?

8 A. I do believe it's five years.

9 Q. Do you know where they obtained their stock of  
10 clematis?

11 A. They buy clematis from many sources: from  
12 Raymond Evison; from Szczepan Marczyński, who is  
13 a grower in Poland; from Malcolm Oviatt-Ham, who  
14 is a grower in England; and from some other  
15 sources, some American sources as well, Spring  
16 Valley.

17 Q. Are they a propagator or a --

18 A. They're a grower.

19 Q. Okay. So they receive plant material already in  
20 soil or some type of growing medium?

21 A. They receive rooted cuttings and they pot them  
22 up.

23 Q. I guess the major question I have for you,  
24 Maurice, at this point, if I can summarize, do  
25 you recognize the term 'Piilu' as constituting a

1 trademark of Mr. Sorenson?

2 A. This is a difficult question. He has told me  
3 that he trademarked, and he just sent me a copy  
4 of the trademark. But until recently, I knew --  
5 I knew that as a hybrid name of a plant that I  
6 had seen in Estonia, and that I have read about  
7 and known for many years.

8 Q. And that everyone in your industry, and in  
9 particular in this specialty of clematis,  
10 recognizes it as a plant name, correct?

11 A. That's correct.

12 Q. Okay. Just as if 'Viola' and 'Romantika' are  
13 plant names.

14 A. That's correct, they're plant names.

15 Q. Have you had a chance to review any of the  
16 literature that's been circulated by  
17 Mr. Sorenson?

18 A. I -- I briefly read it. He sends me -- Just  
19 recently, he sent me a lot of information  
20 regarding trademarks and he's e-mailed me that  
21 information. And I've read most of it, but I --  
22 I'm a busy nurseryman, I don't have a lot of time  
23 to read lengthy e-mails.

24 Q. Sure. Have you seen any -- First off, do you  
25 know if Mr. Sorenson is associated with a

1 business?

2 A. He is associated with a business I think by the  
3 name of Pride of Place.

4 Q. Okay. And do you know if Pride of Place is  
5 marketing or selling cultivars of clematis?

6 A. It is my understanding they are selling plants.

7 Q. Okay. And but you have not purchased anything  
8 from him.

9 A. No. When he called me originally and was so  
10 very rude to me on the telephone, I decided I  
11 didn't want to do business with him.

12 Q. Okay.

13 A. And so I have not done any business with him  
14 since that time.

15 Q. All right. Do you happen to have in your  
16 office a sample of the plant label that you use  
17 for your clematis 'Piilu'?

18 A. I could print one. I don't have one in my hands  
19 at this moment, but I could print one for you if  
20 you would like me to.

21 Q. I would like to have one produced. And we could  
22 mark that as the next exhibit number, which would  
23 be WG 33?

24 A. Exhibit WG 33.

25 Q. Okay. I don't need to have it in front of you

1           because I think you should provide testimony  
2           based on your recollection of the label.

3     A.     Yes.

4     Q.     Does it have two sides?

5     A.     It does have two sides but only one is printed.

6     Q.     Okay. And what material is printed on the one  
7           side?

8     A.     It's simply the name of our nursery, the name of  
9           the plant, and the price, and our part number.

10    Q.     Okay. And the name of the plant when we make  
11           specific reference to this cultivar that we've  
12           been talking about, this hybrid?

13    A.     Clematis 'Piilu'.

14    Q.     Yes.

15    A.     Yes.

16    Q.     How would that appear on the label?

17    A.     The word Clematis, capital C, and then 'Piilu'  
18           would be in single quotes immediately after the  
19           genus name.

20    Q.     Okay. And I'm not going to say that it's on  
21           every plant, every Clematis 'Piilu' that you  
22           sell. But you try to get it on as many as you  
23           can, right?

24    A.     We actually put that label on every plant that  
25           we sell. It's in every plant we sell. We label

1 every plant as they come to us from the grower.

2 Q. Okay. Well, I believe that's the sum and  
3 substance of my questions, Maurice. And I want  
4 to thank you very much for your time.

5 A. You're quite welcome.

6 Q. At any time was there a question that you did  
7 not understand or you still have a question  
8 about?

9 A. No.

10 MR. KANE: Okay. I want to thank you for  
11 your time. I appreciate you taking the time away  
12 from your business for us this morning. I  
13 realize that you have no real stake in this other  
14 than to assist the industry. So thank you very  
15 much.

16 THE WITNESS: You're welcome.

17 (DEPOSITION CONCLUDED AT 10:26 A.M.)

18

19 (N.B.: As a matter of firm policy, the  
20 stenographic notes of this transcript will be  
21 destroyed five years from the date appearing  
22 on the following certificate, unless notice  
23 is received otherwise from any party or  
24 counsel thereto on or before said date of the  
25 23rd day of August, 2009.)

## C E R T I F I C A T E

I, Deelana Johnson, Certified Shorthand Reporter, do hereby certify that MAURICE HORN personally appeared before me on August 20, 2004, 9:10 a.m., at 20300 N.W. Watson Rd., Scappoose, Oregon; that I was not disqualified under Rule 28 of the FRCP; that the witness was by me first duly sworn on oath, and examined upon oral interrogatories propounded by counsel, counsel for the Applicant not being present; that said proceedings were taken down by me in stenotype and thereafter reduced to typewriting; and that the foregoing transcript, Pages 1 to 49, both inclusive, constitutes a full, true and accurate record of said examination of and testimony given by said witness, and of all other proceedings had during the taking of said deposition, and of the whole thereof, to the best of my ability.

Witness my hand at Portland, Oregon, this

23<sup>rd</sup> day of August, 2004.



*Deelana Johnson*

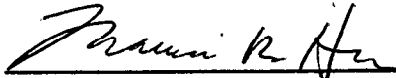
Deelana Johnson

CSR No. 90-0104

# CORRECTION SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
p 22	5-6 7-8	→ Clematis texensis 'Gnaeetye Beauty' → Clematis 'Gnaeetye Beauty'
p 24	3-4	"An Illustrated Encyclopedia of Clematis"
p 41	5-6 + 21	- <u>Clematis</u> 'Romantika', <u>Clematis</u> 'Viola' <u>Clematis</u> 'Viola'
p 42	10	<u>Clematis</u> 'Pi. l.''
p 43	8	"I needed" not "it needed"
p 48	21	<del>all</del> Clematis 'Pi. l.''

I hereby certify that I have read the foregoing deposition, and that the transcription together with any corrections noted, is a true and accurate record of my testimony given at the time and place noted.


8-26-01  
 \_\_\_\_\_  
 Witness' Name Date

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public For:

My commission expires:

# *An Illustrated Encyclopedia of* **CLEMATIS**

Mary Toomey & Everett Leeds

Photography Editor  
Charles Chesshire

Published in association with the  
BRITISH CLEMATIS SOCIETY

Walters Gardens  
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91153755  
Walters Gardens  
Exb. 19

but produces the best flower colour in a sunny position. Not as rampant as most cultivars of *C. montana*.

Recommended use: Suitable for a pergola, or along a wall or fence. Zones 7–9.

### *Clematis pierotii*

Origin: Japan

Parentage and year: Species. 1867.

Habit: Slender, scrambling or climbing, deciduous perennial.

Height: 3–3.6 m (10–12 ft.), often less in cultivation.

Description: The small, rather flat, cream to creamy white flowers, 2.5–3.5 cm (1–1.25 in.) across, are borne from lateral shoots in groups of one to three. Each flower is composed of four spear-shaped, pointed tepals covered with dense, short, fine white hairs on the outside. The creamy stamens are somewhat shorter than the tepals. Stems are thin and wiry. Leaves are divided into three or nine leaflets with irregularly toothed margins and are small, deep green, and somewhat glossy.

Pruning group: 3.

Flowering period: Late summer to late autumn.

Cultivation: Tolerates most garden soils with good drainage. Best grown in full sun where flowering stems can ripen.

Recommended use: Grow against a warm wall or through medium-sized open shrubs. Suitable for a large container. Zones 4–9.

### *Clematis* 'Piilu'

Origin: Raised by Uno Kivistik of Harjumaa, Estonia. The name means "little duckling."



*Clematis pierotii*. Photo by J. Hudson.

Parentage and year: *C. 'Hagley Hybrid'* × *C. 'Mahrovyi'*. 1984.

Habit: Hardy, very compact, deciduous climber.

Height: 1.2–1.5 m (4–5 ft.).

Description: A cultivar of medium vigour. Leaves are dark green, early flowers are double, and later ones are single, upright, open, spreading, and 9–11 cm (3.5–4.5 in.) across. Overlapping, oval tepals vary in number from four to six and are pale mauvish pink inside, distinctly paler towards the scalloped margins, with deeper pink central bars. Numerous tepal-like structures, which are modified spoon-shaped staminodes (sterile stamens), confer the double appearance on the handsome flowers. White filaments and cream anthers constitute the inner fertile stamens. The seed-heads are an attractive golden brown.

Pruning group: 1 or 2.

Flowering period: Late spring to early summer and late summer.

Cultivation: Tolerates most garden soils. Best grown in full sun.

Recommended use: Ideal for container-culture. Grow over medium-sized, moderately vigorous shrubs which do not require pruning. Suitable for a small trellis or obelisk. Zones 4–9.

### *Clematis* 'Pink Fantasy'

Origin: Raised by a Canadian nursery, details not known. Introduced to the British Isles by Fisk's Clematis Nursery, Suffolk, England.

Parentage and year: Unknown. 1975.

Habit: Hardy, moderately vigorous, compact, deciduous climber.

Height: 1.8–2.4 m (6–8 ft.).

Description: A floriferous cultivar. The single flowers, 11.5–14 cm (4.5–5.5 in.) wide, are made of six to eight scalloped, pointed, shell-pink tepals with deeper pink central bars, more prominent towards the base. The tepals are inclined to twist, giving rise to a rather irregular shaped flower, and as the tepals age, the colour fades to a pale pink or even whitish pink. Filaments are deeper reddish pink with dusky red anthers.

Pruning group: 2 or 3. A hard pruning (group 3) results in the loss of early flowers.

Flowering period: Early summer to early autumn.

Cultivation: Tolerates most garden soils and any aspect. Best grown in partial shade to prevent premature fading of flower colour.

# Clematis

# International

# 1999



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**'Marmori'** (means Marble)

1986, Height 2m, Flower size 10-15cm, Hard Prune.

6 candy pink sepals with dusky rose shading recurve on opening but flatten and fade to pinkish-white as the bloom matures. The sepals are very deeply textured, have crimped margins and taper to a point. The stamens have white filaments merging to rich rose-pink anthers.

**'Mikelite'**

1987, Height 2-2.5m, Flower size 12-14cm, Hard Prune.

4 to 6 rich purply-red sepals have a brighter bar, they are broad and taper at both ends. The stamens have white filaments and yellow anthers.

**'Miniseelik'** (means mini-skirt)

1982, Height 1-1.2m, Flower size 5-8cm, Hard Prune.

6 dusky rose sepals have a paler bar and distinct shading. The stamens have pale purply-white filaments and pale yellow anthers.

**'Minister'**

1982, Height 2-2.5m, Flower size 12-15cm, Hard Prune.

6 light blue sepals with a rose bar have wavy margins. The reverse has rose coloured ribs on a white bar. The stamens have white filaments and chocolate-red anthers.

**'Piilu'** (pronounced Pee-loo, means Duckling)

1984, Height 1.5m, Flower size 5-10cm, Light or Hard Prune. With light pruning 'Piilu' will produce double flowers.

4 to 6 mauve-pink sepals with broad rose shading, paling towards the margins, they have a textured surface with irregular white markings. The sepals are broad, have 'frilly' margins and taper to rounded tips. The stamens are pale lemon. A very 'cute' flower!

**'Pulmapäev'** (means 'Wedding Day', named to honour the wedding of Taavi & Aime)

1987, Height 1.5-2m, Flower size 15-18cm, Hard Prune.

6 pearl white sepals are broad with rounded tips. They open boat shaped but flatten as the bloom matures. The stamens have pale yellowy-green filaments and very dark reddy-brown anthers.

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stricata

f 'Fenomen'

f 'Fenomen'

(1994), F: J. McLellan-Scott  
McLellan-Scott (1996), REG:  
ry (1998)  
m across, nodding, solitary in  
e lilac-pink fading to cream,  
fleshy, tip recurved. Filaments  
deciduous climber with stems to  
s irregularly toothed. FL: June-  
growth.  
Mason'.  
nt. 1999: 39.  
client to remember a friend ill

Williams

is, usually solitary in lf-axils,  
a red-brown or purplish veins,  
c to obovate, pointed or some-  
y outside. Anthers pale yellow.  
Achenes 5 x 2.5 mm, broadly  
lky; styles 2.5-3 cm. Stems erect  
g to 1.8 m, ribbed and white  
rk peeling in thin strips when  
h 5-9 lflets; lflets usually lobed  
beneath. FL: June-Sept. of  
W Nepal.

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Clematis 1998: 69, witho

Group

. Johnson (1958), I: (1958)  
across. Buds erect, pale green  
se, hairy. Sepals 6-8, rarely  
n Violet HCC 735/1)(89)  
ave (Methyl Violet HCC 339)  
(Petunia Purple HCC 339)  
bar, outside paler with  
wny bar, 8-11 x 3.1-3.7  
, overlapping, margin wrinkled  
2 cm; filaments white, green  
ple-red with darker connective

Deciduous climber with stems 2-2.5 m. Lvs simple,  
3-lobed or ternate; lflets ovate. FL: May-June on  
previous year's growth, July-Sept on current year's  
growth.  
Published ref. Johnson in *I.C.L.S. Newsl* 1: 26 (1984).  
(Unacceptable name, ICNCP Art. 17.13)

'Piares & Pureizu'  
See 'Pureness & Please'

'Piarese & Blades'  
See 'Pureness & Please'

'Picadilly'  
Misspelling of 'Piccadilly'

'Piccadilly'  
Early Large-flowered Group  
Parentage unknown  
Fls 10-15 cm across. Sepals 6-8, deep purple-blue,  
overlapping, pointed. Stamens creamy white or  
yellow. Deciduous climber with stems 2.5-3.5 m. FL:  
May-June, Sept.  
Published ref. Cunningham Gardens *Cat.* 1975.  
(Misspelling: 'Picadilly')

'pickingeri A. Gray'  
Fls male and female on separate plants, 1.5-3 cm  
across, in many-flowered much-branched terminal  
panicles to 30 cm long. Sepals 4, white, narrowly  
oblong, in male fls 0.7-1 cm long, in female fls 0.7-  
1.4 cm long, margin hairy. Stamens 0.4-0.8 cm;  
anthers with short appendage. Achenes 5-7 x 1-1.5  
mm, usually densely hairy; styles to 6 cm. Evergreen  
climber with stems 5-20 m. Lvs dark green, ternate;  
lflets lanceolate to ovate, entire. FL: Dec-Feb (Apr-  
May in cultivation in N hemisphere). Java, S Celebes  
east to S New Guinea, NE Australia, New Caledonia  
& Fiji.  
Syns: *C. aristata* subsp. *pickingeri* (A. Gray) Kuntze.

'Picton's'  
See synonymy of 'Picton's Variety'

'Picton's Var.'  
See synonymy of 'Picton's Variety'

'Picton's Variety'  
Montana Group  
Parentage unknown  
R: P. Picton (c. 1950)  
Fls 4-7.5 cm across, fragrant. Sepals 4(-6), satiny deep  
pink-mauve (Mauve HCC 633/2-3), 2.5-3.5 x 2-  
2.5 cm, obovate, somewhat concave, margin wavy,  
outside hairy. Filaments white; anthers pale yellow.  
Deciduous climber with stems to 4.5(-7) m, ribbed,  
purple-tinged when young. Lvs bronze, ternate; lflets  
toothed or toothed, densely hairy on veins beneath. FL:  
May-June, with some fls in summer.  
Syns: *C. montana* 'Picton's Variety'; *C. montana*

'Picton's Var.'; *C. montana* var. *rubens* 'Picton's  
Variety'; *C. montana* 'Picton's'; *C. montana* 'Rubens  
Pictons'.  
Published ref. Lloyd 1965: 48, 101.  
(Unacceptable name, ICNCP Art. 17.15)

'Picturata'  
Late Large-flowered Group  
Parentage unknown  
R: George Jackman & Son (pre 1877)  
Fls 15-16 cm across. Sepals 6(-8), pale mauve to  
silver-grey, mottled and spotted with bright purple  
throughout but especially towards the base of the bar,  
ovate to elliptic, long-pointed, overlapping.  
Filaments white; anthers chocolate-purple. Lvs  
pinnate. FL: June-Sept.  
Published ref. M & J 1877: 112.

'pierotii Miq.'  
Fls bell-shaped, c. 2.5 cm across, erect in few-many-  
flowered inflorescence. Buds broadly obovoid,  
adpressed-hairy. Sepals 4, white, 0.8-1.3 cm long, a  
little longer than the stamens, oblong to lanceolate,  
spreading, pointed, hairy outside. Stamens c. 1 cm  
long, purplish. Achenes c. 5 x 2 mm, ellipsoid or  
ovoid, flattened; styles white or yellowish, c. 2 cm.  
Stems hairless, climbing 3-4 m. Lvs 1-2-ternate or 2-  
pinnate; lflets ovate to ovate-lanceolate, sharply  
toothed, beneath soft-hairy especially on veins. FL:  
Aug-Oct. Japan.  
Syns: *C. parviloba* Gard. & Champ. subsp. *pierotii*  
(Miq.) Kuntze.

'Pierrot'  
Parentage unknown  
R: Masako Takeuchi (1993)  
Fls 12-15 cm across. Sepals brownish purple. Anthers  
brown.  
Published ref. Koowaki 1997.

'Pietr Skarga'  
Misspelling of 'Piotr Skarga'

'Piulu'  
Early Large-flowered Group  
'Hagley Hybrid' x 'Makhrovi'  
R: U. & A. Kivistik (1984), F: U. & A. Kivistik  
(1987), N: U. & A. Kivistik (1988), REG: EPIVCD  
(2000)  
Fls single and double, (4-)6-12 cm across, solitary in  
lf-axils. Sepals of single fls 4-6, mauve-pink, bar  
broad, purple-red, surface textured and with irregular  
white markings, 2-5 cm long, broadly elliptic, blunt  
but apiculate, overlapping, margin frilly. Filaments  
whitish; anthers yellow. Deciduous climber with  
stems 1-2 m. Lvs dark green, ternate or rarely  
pinnate. FL: May-June on previous year's growth (fls  
often double), Sept-Oct on current year's growth (fls  
single).  
Published ref. Toovere 1992; *The Clematis* 1992: 59

(as 'Pülu').  
(Misspelling: 'Pülu')

**'Pili'**  
Misspelling of 'Pille'

**'Pille'**  
Late Large-flowered Group  
'Valge Daam' (s) × 'Niobe'  
R: U. & A. Kivistik (1987), F: U. & A. Kivistik (1989), N: U. & A. Kivistik (1991), REG: EPPIVCD (2000)  
Fls 14-18 cm across, solitary in lf-axils. Sepals 6, reddish-violet to mauve, 7-9 cm long, broadly elliptic, pointed, overlapping, margin wavy. Filaments whitish; anthers pale yellow. Deciduous climber with stems 1.5-2 m. FL: July-Sept on current year's growth.  
Published ref. Türi AMS Clematis Cat. 1993; Kivistik, *Eesti elulõngad* 1998.  
(Misspelling: 'Pili')

**'Pink'**  
Integrifolia Group  
Parentage unknown  
R: Hiroshi Hayakawa  
Sepals pink. Anthers yellow.  
Published ref. Koowaki 1992.  
(Unacceptable name, ICNCP Art. 17.11)

**'Pink Cameo'**  
Early Large-flowered Group  
Probably a sport of 'The President'  
R: J. van Laeken, N: J. van Laeken (1994), REG: J. van Laeken (1999)  
Fls 15-20 cm across, solitary. Sepals 6, pink with darker bar, 7.5-10 × 3.8-4 cm, obovate, gappy, pointed. Filaments creamy white; anthers pale yellow. Deciduous climber with stems 2.5-3 m. Lvs grey-green, ternate; lflets entire. FL: June-July.  
Published ref. Spring Valley Greenhouse, Inc. Cat. 1999.  
(The original plants were imported into the USA from The Netherlands. At first thought to be a sport of 'Guiding Star', but this seems to be unlikely.)

PINK CHAMPAGNE  
Trade designation of 'Kakio'

PINK CHIFFON  
Trade designation of 'Hagley Hybrid'

**'Pink Fantasy'**  
Late Large-flowered Group  
Parentage unknown  
I: J. Fisk (1975)  
Fls (8-)10-15(-18) cm across (Lloyd & Bennett 1989 say the fls are semi-double). Sepals (5-)6-7, shell-pink with peach-pink highlights and with deeper bar which disappears before it reaches the apiculate tip,

ovate to almost elliptic, overlapping, often twisted with uneven and somewhat wavy margin. Filaments white; anthers deep dusky pink-red or beige. Deciduous climber with stems 1.8-2(-3.5) m. Lvs ternate; lflets ovate. FL: late June-Oct.  
Published ref. Edwards in *Practical Gardening* 45, July 1975; Fisk 1975: 83.  
(Fisk obtained the original plants from Canada. The fls fade in sunlight.)

**'Pink Flamingo'**  
Atragene Group  
*alpina* × unknown  
R: Miss E. Jones, I: R.J. Evison (c. 1993)  
Fls semi-double, 3-5 cm across, nodding. Sepals pale pink with darker veins and a darker flush at base, 4-5 cm long. Stamens paler pink. Fruit-heads persistent, pinkish red. Deciduous climber with stems 2-4 m. FL: Apr-May, less profusely July-Aug.  
Syns: *C. alpina* 'Pink Flamingo'.  
Published ref. Bulkyard Plants Cat. 1994-96.

**'Pink Lady'**  
Late Large-flowered Group  
Parentage unknown  
I: Sakata no Tane Co.  
Fls 10-12 cm across. Sepals bright pink. Anthers orange-yellow.  
Published ref. Listed in Snoeijer 1991, without description.  
(Named after a singing duo.)

**'Pink Minnie'**  
Montana Group  
'Freda' × 'Marjorie'  
R: R.C. & L.M. Mitchell, F & N: R.C. & L.M. Mitchell (1996), I: Bayliss Nurseries Ltd. (c. 1996), REG: R.C. & L.M. Mitchell (1996)  
Fls single or occasionally semi-double, c. 5 cm across, faintly fragrant, in clusters at the nodes. Sepals single fls 4, mid-pink, outside primrose-yellow, c. 1.1 cm, pointed, tip eventually recurved. Filaments white; anthers white. Fruit-heads persistent. Deciduous climber with brownish new growth. Lvs green tinged with brown, ternate; lflets regularly toothed. FL: Oct-Nov (in S hemisphere) on previous year's growth.  
Syns: *C. montana* 'Pink Minnie'.

**'Pink Pearl'**  
Early Large-flowered Group  
Parentage unknown  
I: Nihon Kaki  
Fls 16-18 cm across (Johnson 1997: 808 say 15 cm across), scented. Sepals 8, satiny pink (Cyclamen Purple HCC 30/1) with deeper pink and with light purple (Phlox Purple HCC 60/1) outside with greenish bar, overlapping, silk-like, wavy. Filaments greenish; anthers creamy yellow or orange-yellow. Deciduous climber.

stems 1.5 m or more or less. Published (1991).

**'Pink Pearl'**  
Syn. of C.

**'Pink Pearl'**  
Atragene Group  
(*fauriei* × *R. M. Job*)  
Fls double red-violet, long-pointed, 1-2 mm across. Lvs lobed almost. Published

**'Pink Star'**  
Montana Group  
'Sunrise' × *R. R.C. M.*  
N: R.C. M.  
Fls semi-double, 4-5, pink, inner sepal at tip. Filaments persistent. Lvs green. Lvs upper surface of leaf's growth. Published

**'Pinkie'**  
Tsuneko Group  
Published ref. Skar  
Parentage unknown  
Francz  
11-15 cm across, 8 × 4 cm, flexed, number with

Published ref. Skar  
Parentage unknown  
Francz

to King  
Published ref. Skar  
Parentage unknown  
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